

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil No.: 1:19-cv-00098
)	
LARRY D. MCGUINN, PATRICIA A.)	
MCGUINN, and PROPEL FINANCIAL)	
SERVICES, LLC,)	
)	
Defendants.)	
_____)	

UNITED STATES' COMPLAINT

Plaintiff, United States of America, pursuant to 26 U.S.C., Sections 7401 and 7403, at the direction of the Attorney General of the United States, or his delegate, and at the request of the Secretary of the Treasury, or his delegate, files this complaint against Defendant Larry D. McGuinn, seeking: (1) a judgment against Defendant Larry D. McGuinn in the amount of his unpaid federal tax liabilities, and (2) enforcement of federal tax liens through foreclosure against, and sale of, certain properties located in Bastrop County, Texas owned by Defendant McGuinn.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 26 U.S.C. §§ 7402(a) and 7403(c) and 28 U.S.C. §§ 1340, and 1345.
2. Venue lies with this Court pursuant to 28 U.S.C. §§ 1391(b) and 1396 because taxpayer Larry D. McGuinn resides, and the real properties that are the subject of this action are located, in Bastrop County, Texas.

PARTIES

3. Plaintiff is the United States of America.

4. Defendant Larry D. McGuinn is the taxpayer owing taxes to the United States. He resides in Smithville, Texas, which is within the jurisdiction of this court.

5. Defendant Patricia A. McGuinn is the married to Defendant Larry D. McGuinn and can be served at her residence located in Smithville, Texas.

6. Defendant Propel Financial Services, LLC (“Propel”) is named as a defendant pursuant to 26 U.S.C. § 7403(b) because it may hold a mortgage lien on one of the real properties at issue. Propel Financial Services, LLC, may be served by serving its registered agent, Kohm & Associates, P.C. at 112 E. Pecan Street, Suite 2810, San Antonio, TX 78205.

COUNT I (JUDGMENT FOR TAX LIABILITY)

7. A delegate of the Secretary of the Treasury made timely assessments against Defendant Larry D. McGuinn for the income tax and penalties shown below, which after adjustments for statutory interest accruals, penalty accruals, other statutory amounts, abatements, payments and credits resulted in the following unpaid liabilities as of December 20, 2018:

Tax Year	Date of Assessment	Income Tax, Penalties and Interest as Originally Assessed
2005	02/09/2009	\$1,913,001.10

8. Defendant Larry D. McGuinn owes \$2,832,918.43 for unpaid income tax, penalties, interest, and other statutory accruals, for tax year 2005 as of December 20, 2018.

9. This liability is based on an assessment made pursuant to its notice of deficiency procedures.

10. Despite having been given proper notice and demand for payment of the assessment shown in paragraph 7 above, Defendant Larry D. McGuinn has not paid the amount due.

Therefore, pursuant to 26 U.S.C. § 7402, the United States is entitled to a judgment that Defendant Larry D. McGuinn is liable and indebted to the United States for \$2,832,918.43 as of December 20, 2018, plus prejudgment and post judgment interest thereon at the rates set forth in 26 U.S.C. § 6601, 6621 and 28 U.S.C. § 1961(c), until paid.

COUNT II (ENFORCEMENT OF TAX LIEN)

11. At the time of the above described assessment, a federal tax lien arose pursuant to 26 U.S.C. § 6321 and attached to all property or rights to property then owned, or thereafter acquired, by Defendant Larry D. McGuinn.

12. Defendant Larry D. McGuinn is the owner of two real properties that are adjacent to each other in Smithville, Texas.

13. Defendants Larry D. McGuinn owns a real property whose address is 153 Norma Jean Boulevard, Smithville, Texas 78957 (“the Norma Jean Property”), and is more specifically described as:

Being 1.376 acres of land, more or less, out of Lot 8, DOTY RIVER ESTATES, a subdivision in Bastrop County, Texas, according to the map or plat recorded in Plat Cabivent 2, Page 232A, Plat Records of Bastrop County, Texas.

14. On information and belief Norma Jean Property is Defendants Larry and Patricia McGuinn’s homestead.

15. Defendant Larry D. McGuinn owns a second real property, whose address is 108 Keith Street, Smithville, Texas, 78957 (“the Keith Street Property”), and is more specifically described as:

Lot 9, DOTY RIVER ESTATES, a subdivision in Bastrop County, Texas, according to the map or plat recorded in Plat Cabinet 2, Page 232A, Plat Records of Bastrop County, Texas.

16. The United States also recorded a Notice of Federal Tax Lien against Defendant Larry D. McGuinn with respect to the above described assessment in the real property records of Bastrop County, Texas, on May 21, 2018. This federal tax lien attaches to the Norma Jean Property and the Keith Street Property.

17. Propel may hold a mortgage lien on the Keith Street Property. Propel's lien on the Keith Street Property may take priority over the United States' federal tax liens.

18. As the tax liabilities owed by Defendant Larry D. McGuinn remain unpaid, the United States is entitled pursuant to 26 U.S.C. § 7403 to a judgment enforcing its federal tax liens through foreclosure of those liens against Defendant Larry D. McGuinn's interest in the Norma Jean Property and the Keith Street Property described in paragraphs 13 and 15 above.

Additionally, the Norma Jean Property and the Keith Street Property should be ordered sold free and clear of any rights, titles, liens, claims, or interests of any of the parties to this action with the proceeds of the sale being paid first to the costs of the sale and then to the parties in the order of their priority of interest in the properties.

PRAYER

WHEREFORE, plaintiff, United States of America, requests that this Court:

a) Enter judgment in favor of the United States and against Defendant Larry D. McGuinn for federal income tax for the year 2005, in the amount of \$2,832,918.43, as of December 20, 2018, less any credit or payments made, plus prejudgment and post judgment interest on that amount at the rates set forth in 26 U.S.C. §§ 6601, 6621 and 28 U.S.C. § 1961(c), until paid;

b) Determine that the United States has valid and subsisting federal tax liens that arose with the assessment described in paragraph 7, above, and attached to all of the property and

rights to property of Defendant Larry D. McGuinn, including his interest in the real properties described in paragraphs 13 and 15 above;

c) Determine the priority of the interests of the parties in the real properties described in paragraphs 13 and 15 above;

d) Order that the United States' federal tax liens be foreclosed upon the real properties described in paragraphs 13 and 15 above, that the properties be sold free and clear of any rights, titles, liens, claims, or interests of any of the parties to this action, and that the net proceeds of the sale be distributed to the parties in the order of their priority of interest in the properties;

e) Order that, if the amounts distributed to the United States from the net proceeds of the sale of the real properties described in paragraphs 13 and 15 above are insufficient to satisfy fully the above-described tax liabilities, the United States have judgment for the deficiency against Defendant Larry D. McGuinn; and

f) Award the United States such other and further relief as this Court deems just and proper, including its costs incurred in this action and for any surcharge authorized by 28 U.S.C. § 3011.

JOHN F. BASH
United States Attorney

/s/ Moha P. Yepuri
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ATTORNEYS FOR THE UNITED STATES

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

United States of America,

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Moha P. Yepuri, US Department of Justice, Tax Division
717 N. Harwood St., Suite 400
Dallas, Texas 75201 (214) 880-9767

DEFENDANTS

Larry D. McGuinn, et al.,

County of Residence of First Listed Defendant **Bastrop County**
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
26 U.S.C. §§ 7401 and 7403

Brief description of cause:

The United States is seeking to reduce tax assessments to judgment and to foreclose federal tax liens.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
2,832,918.43

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

02/07/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Moha P. Yepuri

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.